XI-HC-22

(725)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P. No. 414/2002 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहि	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB : HON'BLE SHRI FAKHRUDDIN
AND HON'BLE SHRI L.C. BHADOO, JJ.

6-12-2003

Orders passed,

read in open Court,

signed and dated,

Sd/-
Fakhruddin
Judge

Sd/-
L.C.BHADOO
Judge

पीछे देखिये

726

A.F.R.

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

WRIT PETITION NO.414 OF 2002

Dilip Deshmukh

- Versus -

State of Chhattisgarh and others

AND

WRIT PETITION NO.1269 OF 2001

Dharmendra Swaroop Jain

- Versus -

Union of India and others

POST FOR ORDER ON 6th OF DECEMBER, 2003

Sd/-
L.C.BHADOO
Judge

6th-12-2003

(727)

A.F.R.

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.414 of 2002

PETITIONER:

Dilip Deshmukh,
S/o Late Rao Saheb Deshmukh,
Aged about 54 years,
District Judge,
On deputation as Legal Advisor to the
Governor of Chhattisgarh,
R/o Jail Road, Raipur (C.G.)

Versus

RESPONDENTS:

1. State of Chhattisgarh,
Through: Principal Secretary,
Department of Law and
Legislative Affairs, Mantralaya,
Raipur (C.G.)

2. The High Court of
Chhattisgarh, Bilaspur,
Through: Registrar General.

3. State of Madhya Pradesh,
Through: Principal Secretary,
Department of Law and
Legislative Affairs,
Vindhyachal, 1st Floor,
Bhopal (M.P.)

4. The High Court of Madhya
Pradesh, Jabalpur,
Through: Registrar General.

5. Union of India,
Through: Secretary to the
Ministry of Personnel, Public
Grievances and Pension,
Department of Personnel and
Training, Lok Nayak Bhavan,
3rd Floor, Khan Market,
New Delhi – 110 003

6. Shri B.K. Shrivastava,
Registrar General,
High Court of Chhattisgarh,
Bilaspur (C.G.)

7. Shri V.K. Shrivastava,
District & Sessions Judge,
Raipur (C.G.)

8. Shri Yogesh Mathur,
Addl. District & Sessions Judge
Sakti, District: Bilaspur (C.G.)

9. Shri P.K. Dave,
Addl. Chief Judicial Magistrate,
Raipur (C.G.)

10. Shri G.L. Sonwani,
Chief Judicial Magistrate,
Kawardha,
District: Rajnandgaon (C.G.)

11. Shri K. Vinod Kujur,
Civil Judge, Class-I,
Dhamtari, Distt.: Raipur (C.G.)

12. Shri Dileshwar Rathia,
Additional Civil Judge, Class-II,
Surajpur,
Distt.:Ambikapur-Surguja (CG)

5.b) Union of India,
Through: Ministry of Law and Justice, Government of India,
New Delhi.

Present: -

Mr. Rajendra Tiwari, Sr. Advocate with Mr. P. Diwaker, Advocate:	For the petitioner
Mr. Sanjay K. Agarwal, Deputy A.G.:	For the State/respondent No.1
Mr. Manindra Shrivastava, Advocate:	For respondents 2 & 4
Mr. Prashant Mishra, Advocate:	For respondent No.3
Mr. V.V.S. Murthy, Addl. Central Govt. Standing Counscl:	For rcspondcnts 5-a & 5-b
Mr. K.A. Ansari, Advocate:	For respondent No.6
Mr. Malay Kumar Bhaduri, Advocate:	For respondent No.7
Mr. R.S. Jaiswal, Advocate:	For respondents 8 to 12

AND

Writ Petition No.1269 of 2001

PETITIONER: Dharmendra Swaroop Jain,
S/o Shri G.L. Jain,
Aged about 59 years,
District & Sessions Judge,
Raipur (C.G.)

Versus

6/12

RESPONDENTS:

1. Union of India,
Through: Secretary,
Ministry of Personnel, Public Grievances and Pension,
Deptt. of Personnel & Training,
Lok Nayak Bhavan,
Khan Market, New Delhi.

2. State of Madhya Pradesh,
Through: Secretary,
Ministry of Law & Legal Affairs,
Vallabh Bhavan, Bhopal (M.P.)

3. State of Chhattisgarh,
Through: Secretary,
Ministry of Law & Legal Affairs,
D.K.S. Bhavan, Raipur, (C.G.)

4. Registrar General,
High Court of Madhya Pradesh,
Jabalpur (M.P.)

5. Registrar General,
High Court of Chhattisgarh,
Bilaspur (C.G.)

6. Shri B.K. Shrivastava,
District & Sessions Judge,
C/o Registrar, High Court of Chhattisgarh, Bilaspur (C.G.)

7. Shri V.K. Shrivastava,
District & Sessions Judge,
Raipur (C.G.)

Present: -

Mr. H.N. Vyas, Advocate:	For the petitioner
Mr. V.V.S. Murthy, Addl. Central Govt. Standing Counsel:	For respondent No.1
Mr. Prashant Mishra, Advocate:	For respondent No.2
Mr. Sanjay K. Agrawal, Dy. A.G.:	For the State/respondent No.3
Mr. Manindra Shrivastava, Advocate:	For respondents 4 & 5
Mr. K.A. Ansari, Advocate:	For respondent No.6
Mr. Malay Kumar Bhaduri, Advocate:	For respondent No.7

Before: Hon'ble Shri L.C. Bhadoo, J.

6/12

ORDER

(Passed on 6th December, 2003)

The following order of the Court was passed by *Justice L.C. Bhadoo*: -

1. By this writ petition (W.P.No.414 of 2002) under Articles 226 & 227 of the Constitution of India, petitioner Mr. Dilip Deshmukh, District & Sessions Judge (Super Time Pay Scale), has challenged the order dated 07.06.2001 passed by the Union of India ordering provisional allocation of respondent No.6 Mr. B.K. Shrivastava, District & Sessions Judge, Rewa (M.P.) retrospectively w.e.f. 01.11.2000 to the State of Chhattisgarh under Section 68 (1) of the Madhya Pradesh Reorganisation Act, 2000, and also the order dated 07.12.2001 passed by the Union of India by which under the Above Super Time Scale category, respondents 6 & 7 namely, Mr. B.K. Shrivastava & Mr. V.K. Shrivastava, respectively, have been allocated finally to the State of Chhattisgarh w.e.f. 01.11.2000.

2. Similarly, by writ petition No.1269 of 2001 under Articles 226 & 227 of the Constitution of India, petitioner Mr. Dharmendra Swaroop Jain, District & Sessions Judge, Raipur, has challenged the provisional allocation of Mr. B.K. Shrivastava, District & Sessions Judge, Rewa (M.P.), vide order dated 07.06.2001 passed by the Union of India under Section 68 (1) of the M.P. Reorganisation Act, 2000 and also the final allocation of above two Officers i.e. Mr. B.K. Shrivastava and Mr. V.K. Shrivastava.

3. Since, in both these writ petitions, same question of law is involved and also same allocation orders are challenged, they are being disposed of by this common order.

4. At the time of the provisional allocation both the petitioners were working in the cadre of District & Sessions Judge in Super Time Scale, whereas, both the respondents (respondents 6 & 7) were working in the cadre of District & Sessions Judge in Above Super Time Pay Scale. Facts leading to filing of these writ petitions are that the Government of India decided to bifurcate the State of Madhya Pradesh into two States i.e. Madhya Pradesh and Chhattisgarh, accordingly a Bill was laid before the Parliament

under the enabling power of Articles 2, 3 & 4 of the Constitution of India. Relevant parts of Articles 2, 3 & 4 of the Constitution of India, which are relevant in these cases are reproduced below: -

> **2. Admission or establishment of new States..**---Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.
>
> **3. Formation of new States and alteration of areas, boundaries or names of existing States..**---Parliament may by law---
>
> (a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;
> (b) increase the area of any State;
>
> [*Explanation I.*---In this article, in clauses (a) to (e), "State" includes a Union territory, but in the proviso, "State" does not include a Union territory.
>
> *Explanation II.*---The power conferred on Parliament by clause (a) includes the power to form a new State or Union territory by uniting a part of any State or Union territory to any other State or Union territory.]
>
> **4. Laws made under Articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters.**--- (1) Any law referred to in Article 2 or Article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.
>
> (2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of Article 368.

5. The Parliament resolved to bifurcate the State of Madhya Pradesh as mentioned above and in pursuance of that, Act No.28 of 2000 i.e. the Madhya Pradesh Reorganisation Act, 2000, was enacted by the Parliament for providing the territories of the two States and to make the necessary supplemental, incidental and consequential provisions relating to representation in Parliament and in the State Assemblies, distribution of revenues, apportionment of assets and

liabilities, management and development of water resources and other matters. In Part-IV of this Act (No.28 of 2000) a provision was made regarding High Court and in Part-VIII Provisions as to services were made. Relevant Sections 68, 69, 71 and 72 read as under: -

> **68. Provisions relating to services in Madhya Pradesh and Chhattisgarh.**---(1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Madhya Pradesh shall, on and from that day provisionally continue to serve in connection with the affairs of the State of Madhya Pradesh unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Chhattisgarh:
>
> Provided that no direction shall be issued under this section after the expiry of a period of one year from the appointed day.
>
> (2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.
>
> (3) Every person who is finally allotted under the provisions of sub-section (2) to a successor State shall, if he is not already serving therein be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government.
>
> **69. Provisions relating to other services.**--- (1) Nothing in this section or section 68 shall be deemed to affect on or after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with the affairs of the Union or any State:
>
> Provided that the conditions of service applicable immediately before the appointed day in the case of any person deemed to have been allocated to the State of Madhya Pradesh or to the State of Chhattisgarh under section 68 shall not be varied to his disadvantage except with the previous approval of the Central Government.
>
> (2) All services prior to the appointed day rendered by a person –
>
> (a) if he is deemed to have been allocated to any State under section 68, shall be deemed to have been

rendered in connection with the affairs of that State;

(b) if he is deemed to have been allocated to the Union in connection with the administration of the Chhattisgarh shall be deemed to have been rendered in connection with the affairs of the Union;

for the purposes of the rules regulating his conditions of service.

(3) The provisions of section 68, shall not apply in relation to members of any All India Service.

71. Advisory committees.--- The Central Government may, by order establish one or more Advisory Committees for the purpose of assisting it in regard to –

(a) the discharge of any of its functions under this Part; and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this Part and the proper consideration of any representations made by such persons.

72. Power of Central Government to give directions.--- The Central Government may, give such directions to the State Government of Madhya Pradesh and the State Government of Chhattisgarh as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and the State Governments shall comply with such directions.

6. In order to carry out the provisions of above Sections, the Central Government issued guidelines for provisional allocation under Section 72 of Act No.28 of 2000 on 13th September, 2000, regarding the principles governing the provisional allocation of personnel belonging to the services other than the All India Services to the new States in accordance with the provisions of the Reorganisation Acts, 2000 and thereafter, for final allocation guidelines were again issued by the Government of India vide order dated 21st/22nd December, 2000. A provision of Advisory Committees was provided for under Section 71 of the Act and State Advisory Committee was constituted vide order dated 01.01.2001, as per the provisions of Section 71 of the Reorganisation Act; meeting of that Committee was held on 23rd & 24th February, 2001, under the Chairmanship of Mr. N.V. Lohani. In the meeting of that Committee certain modalities for allocation of

the personnel to the successor States were laid down and minutes of the meeting were also prepared. As per clause 3.3 of the minutes, it was decided that as the allocation of the employees of State Assembly and Judiciary also comes under the purview of the Reorganisation Act, therefore, looking to the specialties of these services, the allocation of employees of these two institutions should be made in consultation with the Hon'ble Speakers of the both the Assemblies and the Hon'ble Chief Justices of both the High Courts. Again as per clause 3.6 the principles governing the distribution of posts were laid down and it was decided to allocate 26.23% posts to the newly created State of Chhattisgarh and in the last lines of Chapter-V regarding the distribution of the services of the employees of the State Judiciary and the State Assembly, it was mentioned that steps should be taken for their allocation according to the advice of Hon'ble the Speakers of the State Assemblies and Hon'ble the Chief Justices of both the High Courts. Further, in order to carry out the purpose of the Act, guidelines dated 22nd March, 2001 (Annexure P-10) were also issued by the Reorganisation Cell under the signature of Mr. Raghuvendra Singh Sirohi, Principal Secretary, Government of Madhya Pradesh, for allocation of the employees.

7. In order to appreciate the arguments advanced by the learned counsel for the parties, it is necessary to mention here the relevant service particulars of concerned Officers: -

Mr. A.K. Tiwari: He was in the Above Super Time Pay Scale since 1999. He retired on 31st October, 2001. Initially he opted for the State of Chhattisgarh. Accordingly, he was provisionally allocated to the State of Chhattisgarh w.e.f. 01.11.2000. However, on 07.09.2001, one day before the meeting of Hon'ble the Chief Justices of the two High Courts, he gave in writing that he want to change his option and wanted to be allocated to the State of Madhya Pradesh. Accordingly, the two Hon'ble Chief Justices advised that he should be allocated to the State of Madhya Pradesh. But after that meeting in the month of October, he again withdrew his request for change of option for allocation. As his earlier request was already acceded and recommendations were already sent to the

Central Government, he was finally allocated to the State of Madhya Pradesh.

Mr. D.S. Jain: On 01.11.2000, he was in the Super Time Pay Scale. He retired on 31.07.2002. His name was approved for grant of Above Super Time Scale on 08.07.2000 by the High Court of Madhya Pradesh. As there was no vacancy in this scale till 01.11.2000, therefore, he was not given this scale till the provisional allocation to the State of Chhattisgarh. However, he was granted Above Super Time Scale w.e.f. 10.08.2001 by the High Court of Chhattisgarh.

Mr. B.K. Shrivastava: He was in the Above Super Time Pay Scale since 1999, before the bifurcation of the State of Madhya Pradesh. His home district was Varanasi. He was allowed by the High Court of Madhya Pradesh to change his home district from Varanasi to Bilaspur vide order dated 04.09.2000, whereas, as per the guidelines issued by the Central Government, for the purpose of allocation, the home district was to be considered as on 1st of April, 2000 and it was decided not to allow the change of home district, thereafter. Initially he opted for the State of Madhya Pradesh, but later on, vide letter dated 11.01.2001 (Annexure R-2/1), he requested the Registrar General, Madhya Pradesh High Court, to change his option and the same was sent to the Registrar General of Chhattisgarh High Court on the same day. Vide letter dated 30.01.2001 (Annexure R-2/2) Mr. T.K. Jha, the then Registrar General of Chhattisgarh High Court conveyed to the High Court of Madhya Pradesh that the High Court of Chhattisgarh gives consent and expresses no objection if Mr. B.K. Shrivastava is allocated to the State of Chhattisgarh and thereafter, vide order dated 07.06.2001, Mr. B.K. Shrivastava was provisionally allocated to the State of Chhattisgarh.

Mr. V.K. Shrivastava: He was already drawing the Above Super time Pay Scale since 1999, before formation of the new State of Chhattisgarh i.e. in the undivided erstwhile State of Madhya Pradesh. He had not given his option for allocation to either of the States. However, in final allocation he was allocated to the State of

Chhattisgarh, as his home District Jagdalpur is part of the State of Chhattisgarh.

8. The Hon'ble Chief Justices of the two High Courts met on 08.09.2001 at Jabalpur for advising final allocation of Judicial Officers to the successor States and in that meeting the Hon'ble Chief Justices had decided to advice to finally allocate, among other Judicial Officers of other pay scales, Mr. B.K. Shrivastava & Mr. V.K. Shrivastava of the Above Super Time Pay Scale to the State of Chhattisgarh and Mr. A.K. Tiwari of Above Super Time Pay Scale to the original State of Madhya Pradesh w.e.f. 01.11.2000.

9. We have heard the learned counsel for the parties at length.

10. It is made clear here that in these writ petitions the only challenge is to the allocation of respondents 6 & 7. Learned counsel for the petitioners very frankly submitted at the Bar that the petitioners are not challenging the final allocation of other Officers. As the petitioners are affected and aggrieved by the allocation of respondents 6 & 7, therefore, both the writ petitions should be considered to that extent only. Therefore, we are required to decide the question up to that extent only and we are not entering into the details of allocation of all the officers of other pay scales.

NATURE OF GUIDELINES

11. Mr. Sanjay K. Agrawal, the learned Deputy Advocate General appearing on behalf of the State of Chhattisgarh argued that the guidelines issued by the Central Government, the Advisory Committee and the State Reorganisation Cell are not binding in nature as the same are not statutory in nature. Therefore, they are not enforceable at law. But, we do not find any force in this argument of the learned Deputy Advocate General for the reason that as extracted above, Section 72 of the Reorganisation Act No.28 of 2000 envisages that "the Central Government may, give such directions to the State Government of Madhya Pradesh and the State Government of Chhattisgarh as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and the State Governments shall comply with such

directions". Therefore, the above guidelines issued by the Central Government and the Advisory Committee constituted under Section 71 of the Reorganisation Act, 2000, and the guidelines issued by the Reorganisation Cell in our considered opinion are issued under the above Section. Therefore, these are statutory guidelines and they have statutory force and any action taken in accordance with these guidelines cannot be assailed on the ground that these guidelines are not enforceable. For this view, we are fortified by the judgment of the Apex Court in the case of **The State of Maharashtra and another vs. Chandrakant Anant Kulkarni and others** reported in **AIR 1981 Supreme Court 1990** (Para 9 & 10).

ARTICLE 235 OF THE CONSTUTITON OF INDIA

12. Learned counsel for the petitioners argued that it is an admitted fact that before issuance of final allocation order the two High Courts were not consulted. Only Hon'ble the Chief Justices considered and prepared the list and gave their advice to the Central Government. As per Article 235 of the Constitution of India, powers of control over district courts and courts subordinate thereto including the posting and promotions are vested in the High Court. Therefore, before sending the list for final allocation to the Central Government, the list ought to have been approved by Full Court of two High Courts and in absence thereof, the final allocation is not in conformity with Article 235 of the Constitution of India. Therefore, the allocation suffers from illegality being contrary to Article 235 of the Constitution of India.

13. The learned counsel for the petitioner placed reliance on the following judgments: -

    a. **Madan Mohan Choudhary vs. State of Bihar and others** reported in **(1999) 3 SCC 396**.
    b. **Gauhati High Court and another vs. Kuldhar Phukan** reported in **AIR 2002 SC 1589**.
    c. **Brijmohan Lal vs. Union of India** reported in **2002 (5) SCC 1**.
    d. **Tejpal vs. State of U.P. and another** reported in **AIR 1986 SC 1814**.

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14. On the other hand, learned counsel for the Union of India; learned counsel for the High Courts; learned counsel for respondents 6 & 7; and also learned counsel for the State Governments submitted that looking to the special and peculiar circumstances and being an extra-ordinary event by virtue of Article 4 of the Constitution, action was required to be taken under the special provisions of Act No.28 of 2000 (M.P. Reorganisation Act, 2000) and under this Act, the Central Government was the only competent authority who was entitled to take final decision. Therefore, in this case, Article 235 of the Constitution of India is not applicable, as this Act has been enacted under Articles 2, 3 & 4 of the Constitution of India. In order to carryout and give effect to the provisions of the Reorganisation Act, supplemental and incidental provisions of law as enacted by the Parliament under Articles 3 and 4 of the Constitution of India have been made. In this light similar question came up for consideration before the Himachal Pradesh High Court in the matter of **Shri H.D. Kainthala, Chief Judicial Magistrate vs. The Union of India and others** reported in **1974 (1) S.L.R. 8**, in which the High Court of Himachal Pradesh while interpreting Section 82 of the Punjab Reorganisation Act, 1966, held that,

> "the function of accomplishing the division and integration of the services, which includes the equation of posts and the fixation of seniority, is a function entirely entrusted to the Central Government by Section 82 of the Punjab Reorganisation Act and that it is not open to this Court to sit in judgment on the merits of a decision of the Central Government in exercise of that function. A decision of the Central Government under Section 82 can be assailed either on the ground that it is in excess of the powers conferred by the statue or is vitiated by mala fides and prompted by extraneous considerations".

It was further held that,

> "Reorganisation of States—Central Government whether competent to fix seniority of Judicial Officers as this function is entrusted to High Court under Articles 233 to 235---Held, Articles 233 to 235 are not applicable."

In that judgment it was further held that,

> "the Central Government has been entrusted with the power to determine the equation of posts and fix the seniority of all the Judicial Officers, be they allotted from

> Punjab already serving in Himachal Pradesh. The Punjab Re-organisation Act can be traced to the provisions of Article 3 and Article 4 of the Constitution. Article 3 (a) empowers Parliament to enact a law forming a new State by separation of territory from any State. Under Article 3 (b) the law can provide for increasing the area of any State. The Explanation to Article 3 defines the expression 'State' used in clauses (a) and (b) of Article 3 as including a Union Territory. Article 4 provides that a law referred to in Article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplementary, incidental and consequential provisions as Parliament may deem necessary. The Punjab Re-organisation Act is an example of such legislation. Section 95 of the Act declares that the provisions of that Act shall have effect notwithstanding anything inconsistent therewith contained in any other law. There can be no dispute then that if there is any clash between the Punjab Re-organisation Act and the Himachal Pradesh (Courts) Order, 1948, the latter must yield to the former".

Therefore, it was held that Articles 233 to 235 of the Constitution cannot be applied in the present case.

15. Again, in the matter of **Bhimaji Anna Rao Patil and another vs. The Registrar, High Court of Mysore, Bangalore and another** reported in **AIR 1966 Mysore 81**, it was held by a Division Bench of that Court that,

> "Servants of High Court of existing State allotted to service of High Court of new State --- Power to integrate them into service of new High Court including the power to equate the posts for the purpose belongs exclusively to Central Government --- Orders passed by Chief Justice in that regard are merely of provisional character --- Hence Registrar of the High Court is bound to submit all papers and representations by the affected persons to Central Government for decision --- Power given to Central government under Section 115, States Reorganisation Act is a special power which overrides the power given to Chief Justice under Article 229 of the Constitution of India".

16. In the case of **V.B. Raju vs. State of Gujarat and another** reported in **AIR 1980 Supreme Court 2075**, the provisions of Reorganisation Act and the affect of law made under Articles 3 & 4 of the Constitution of India vis-à-vis Article 222 (1) of the Constitution of India were considered by the Hon'ble Apex Court. In

this matter, the question arose before the Apex Court that if any High Court Judge is allotted to a newly created High Court under the provisions of Bombay Reorganisation Act, whether the Judge who was allocated from Bombay High Court to newly created Gujarat High Court was entitled for compensatory allowance in terms of Article 222 (1) of the Constitution of India. The Hon'ble Apex Court held that,

> "Articles 3 and 4 of the Constitution deal with a special situation and so long as a provision of law promulgated by Parliament can be considered as supplemental, incidental or consequential to the formation of a new State it would be enforceable even though it might amount to an amendment of certain provisions of the Constitution. The provision contained in Section 29 of the Act is clearly consequential to the formation of the State of Gujarat and the establishment of a High Court for it. It was for the purpose of setting up that High Court that Judges then serving in the Bombay High Court were, so to say, "allotted" to the High Court of Gujarat; and although their appointment to the Gujarat High Court may partake of some of the characteristics of a transfer, we do not think that they can be said to have been transferred from the Bombay High Court to the Gujarat High Court within the meaning of Article 222 (1) of the Constitution. The entitlement to compensatory allowance under Article 222 (2) is conditional upon the Judge being "so transferred", that is, transferred; as envisaged by Article 222 (1). Since the appellant was "allotted" to the Gujarat High Court on the setting up of that Court, he will not be entitled to claim the compensatory allowance."

17. Therefore, in view of the above decisions and in view of Section 85 of the M.P. Reorganisation Act, 2000 (Act No.28 of 2000), that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law, looking to the provisions of Part-VIII of the Reorganisation Act (Act No.28 of 2000) and provisions of Section 68 of this Act, the provisions of Part-VIII of the Act and guidelines issued under Section 72 of the Act are incidental and supplemental to the scheme of the Reorganisation of States. The same are enacted for the purpose of giving effect to the reorganisation scheme and to protect the interest of those public servants who are affected by the reorganisation. In order to render justice to the service personnel allotted to the new State and to avoid any possibility of their being discriminated against, it was thought necessary to entrust the

powers mentioned in Section 68 of the M.P. Reorganisation Act, 2000, to the Central Government. The power conferred upon the Central Government was a special power as the entire affairs of reorganisation of the State was an extra-ordinary event by virtue of Article 4 of the Constitution of India. It was designed to meet special need in the special circumstances. Therefore, matters falling within the scope of Section 68, the power given to the Central Government is exclusive and has overriding effect on Article 162 of the Constitution of India and that given to the Governor under Article 309 of the Constitution or that given to the High Court under Article 235 of the Constitution.

18. **Moreover, the validity of Sections 68 & 85 has not been challenged in these petitions. Therefore, the petitioners cannot challenge the powers of Central Government for allocating the Judicial Officers without challenging the virus of Sections 68 & 85 of the M.P. Reorganisation Act, 2000 (No.28 of 2000).**

19. In view of the extra ordinary event by virtue of Article 4 of the Constitution of India, and in view of the scheme under Section 68 of the M.P. Reorganisation Act, 2000, and also in view of Section 85 of the M.P. Reorganisation Act, 2000, the judgments cited by the learned counsel for the petitioner are not applicable in the present case, because in all these cases Article 235 of the Constitution of India was interpreted in the ordinary course and none of these cases deals with the situation arising out of the extra-ordinary event under the State Reorganisation, as has been mentioned earlier that in view of Section 85 of the M.P. Reorganisation Act, 2000, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law.

SCOPE, MODE AND MANNER OF ALLOCATION UNDER SECTION 68 OF THE M.P. REORGANISATION ACT, 2000

20. Learned counsel for the petitioner argued that as per the scheme of Section 68 of the M.P. Reorganisation Act, 2000, (No.28 of 2000) provisional allocation was to be made only once and once the

provisional allocation was made, thereafter, the Central Government was not competent to make further provisional allocation as per the provisions of Section 68. He further submitted that proviso to sub-section (1) of Section 68 is in fact proviso to the whole Section, it governs the whole Section and it cannot be interpreted that this proviso is to sub-section (1) of Section 68 as this proviso speaks that no direction shall be issued under this Section after the expiry of a period of one year from the appointed day. The word 'this Section' has been used in this proviso and the word 'sub-section' has not been used. Moreover, sub-section (2) further makes it clear which starts with the words 'as soon as may be after the appointed day, the Central Government shall, by general order or special order, determine the successor State to which every person referred to in sub-section (1) shall be finally allotted for service'. Therefore, the words 'as soon as' of sub-section (2) makes it clear that once the provisional list was issued, the Central Government was required to issue the final allocation list that is why a rider of one year was put on this Section. To support his argument, the learned counsel for the petitioner further submitted that the time schedule fixed under Part-VIII of the final guidelines issued by the Central Government on 21st/22nd December, 2000, clearly shows that after the constitution of the State Advisory Committee, the Committee was required to distribute the posts for the successor States within one month from the date of its constitution and thereafter, within nine months, the Central Government was required to notify the final list for information of all concerned after following the process as given in the time schedule.

21. In support of his arguments, learned counsel for the petitioner relied upon the following cases of the Hon'ble Apex Court: -

b. **Harbhajan Singh vs. Press council of India and others** reported in **(2002) 3 Supreme Court Cases 722**.

c. **J.K. Industries Ltd. and others vs. Chief Inspector of Factories & Boilers and others** reported in **(1996) 6 Supreme Court Cases 665**.

d. **Commissioner of Income-tax, U.P. vs. Jagannath Mahadeo Prasad** reported in **AIR 1969 Supreme Court 209**.

e. **Mallawwa (Smt.) and others vs. Oriental Insurance Co. Ltd. and others** reported in **(1999) 1 Supreme Court Cases 403**.

22. On the other hand, learned counsel appearing on behalf of all the respondents submitted that reading of Section 68 of the M.P. Reorganisation Act, as a whole, clearly shows that till one year from the appointed day, the Central Government was within its right, according to the provisions of sub-section (1) read with proviso to that sub-section, to issue as many as provisional lists by general or special order for allocating the persons to serve provisionally in connection with the affairs of the State of Chhattisgarh. As far as the question of final allocation was concerned, no limitation was prescribed. The words 'as soon as' used in sub-section (2) cannot be interpreted that in all probability the final list was to be issued before one year and final list issued after one year was without authority and therefore, it cannot be given effect to.

23. In the case of **Harbhajan Singh *(supra)***, while interpreting Section 6 (7) of the Press Council Act, 1978, the Hon'ble Apex Court held that,

> "Literal meaning --- Grammatical and plain meaning should be preferred unless that leads to absurdity or anomaly or unless material available justifies a different meaning --- In absence of any material, a different meaning cannot be ascribed by tracing history of the legislation and attributing object and legislative intendment which suits court's own view. Where right to be appointed is conferred by the statue, any ineligibility entailing a bar on being appointed should be clearly provided in absence of which such bar cannot be read into the provision on the basis of assumed intention."

24. In other decision in the case of **J.K. Industries Ltd. and others *(supra)***, the Hon'ble Apex court while interpreting proviso (ii) to Section 2 (n) of the Factories Act, 1948, observed that,

> "A proviso to a provision in a statue has several functions and while interpreting a provision of the statue, the Court is required to carefully scrutinize and find out the real object of the proviso appended to that provision. It is not a proper rule of interpretation of a proviso that the enacting part or the main part of the section be construed first without reference to the proviso and if the same is found to be ambiguous only then recourse may be had to examine the proviso. On

> the other hand an accepted rule of interpretation is that a section and the proviso thereto must be construed as a whole, each portion throwing light, if need be, on the rest. A proviso is normally used to remove special cases from the general enactment and provide for them specially. A proviso qualifies the generality of the main enactment by providing an exception and taking out from the main provision, a portion, which, but for the proviso would be a part of the main provision. A proviso must, therefore, be considered in relation to the principal matter to which it stands as a proviso. A proviso should not be read as if providing something by way of *addition* to the main provision which is *foreign* to the main provision itself. In some cases, a proviso may be an exception to the main provision though it cannot be inconsistent with what is expressed in the main provision and if it is so it would be ultra vires of the main provision and struck down."

25. In the case of **Commissioner of Income-tax *(supra)***, the Hon'ble Apex Court while interpreting the proviso to Section 24 (1) of the Income-tax Act, 1922, observed that,

> "Where the language is quite clear and no other view is possible it is futile to go into the question whether the proviso to Section 24 (1) operates as a substantive provision or only by way of an exception to Section 24 (1)."

26. In the case of **Mallawwa (Smt.) and others *(supra)***, the Hon'ble Apex Court held that,

> "Proviso though appearing after sub-section (1) (b) (ii) of Section 95 of the Motor Vehicles Act, 1939, is a proviso to sub-section (1) (b) (i) after amendment."

27. In the light of the above principles laid down by the Hon'ble Apex Court, in the first instance, plain meaning should be preferred, unless that leads to absurdity or anomaly or unless material available justifies a different meaning, the Court has to carefully scrutinize in order to find the object of the proviso appended to the provision, if we look into the provisions of Section 68, as extracted in previous part of this order, shows that as per sub-section (1), the Central Government was required to issue immediately before the appointed day, provisional list of the persons to serve in connection with the affairs of the State of Chhattisgarh and unless a person by a general or special order of the Central Government was allotted to the State of Chhattisgarh was required to provisionally continue to

serve in connection with the affairs of the State of Madhya Pradesh. As per the proviso for issuance of the general or special order, the outer limit was fixed up to one year i.e. up to one year from the appointed day the Central Government was within its right to issue provisional list and thereafter, as per sub-section (2) of Section 68, the Central Government was required to determine by general or special order the successor States to which every person referred to in sub-section (1) shall be finally allotted for service and the date with effect from which such allocation shall take effect or deemed to have taken effect. Sub-section (3) of Section 68 lays down that every person who is finally allotted under the provisions of sub-section (2) to a successor State shall, if he is not already serving therein be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government.

28. As per sub-sections (1) & (2) of Section 68 of the M.P. Reorganisation Act, 2000, the Central Government was empowered to issue as many as orders, by way of general or special order, of allocation of persons to successor States at the provisional stage and at final stage looking to ground realities and requirements of persons by the successor States in order to meet the administrative exigencies and also to ensure that all the working persons are allocated to the either of the successor States.

29. Therefore, combined reading of these three sub-sections makes it clear that initially the Central Government was required to issue a provisional list or lists of persons and such provisional lists by general or special orders were to be issued within one year from the appointed day. The word 'as soon as' denotes that even the final list after completing the whole exercise could have been issued within one year, but it was not mandatory that it should have been issued in all probability within one year after following the prescribed procedure. Even if it was not issued within one year, the Central Government was not prohibited to issue the same after expiry of one year as no outer limit was fixed for issuance of list of final allocation.

30. In Bihar Reorganisation Act, 2000, similar proviso was added to sub-section (1) of Section 72, which deals with provisional allocation. A similar proviso was also appended to Section 73 (1) of the Uttar Pradesh Reorganisation Act, 2000, in which provisions relating to other services was provided in Section 73 of the Act and after sub-section (1), a proviso that every direction under this sub-section issued after the expiry of a period of one year from the appointed day shall be issued with consultation of the Governors of successor States. So, in all the three Acts, at the same time, a similar proviso was appended to sub-section which deals with provisional allocation. The intention behind this proviso was that issuance of the provisional allocation list of the employees should be restricted up to one year only and no such list is allowed to be issued beyond one year. The provisional allocation is always made in order to meet the urgent administrative exigencies and in order to ensure smooth functioning of administration in the newly created State. By any stretch of imagination, it cannot be interpreted that the intention of the Parliament behind adding this proviso was to add this proviso to whole section and to ensure that final allocation should be made within one year. Therefore, the arguments of the learned Senior Counsel appearing on behalf of the petitioner that the proviso in fact is a proviso to the whole section and is not to sub-section (1), is without force.

31. Even otherwise, if we look into the scheme under which the Advisory Committee was required to undergo a process in order to finalize the list, it was itself such a lengthy procedure, which was not feasible for the Central Government to issue final list within a year from the appointed day. Even if we look into the time schedule laid down by the Central Government, clause (1) of which says that the State Advisory Committee will finalize the distribution of posts for the successor States within one month from the date of the constitution of the Advisory Committee and thereafter, further steps as suggested in the scheme were to be taken from 01.01.2001, from this date, it was not possible for the Central Government to issue final allocation before 01.11.2001. It is true that in the proviso to sub-section (1) of Section 68 of the M.P. Reorganisation Act, 2000,

the word "section" has been used instead of the word "sub-section". But in view of the above discussion and looking to the scheme of Section 68 of the Act and the time schedule prepared under the guidelines for preparation of the final list, only one interpretation can be given to the word "section" that it has been used with reference to sub-section (1) of Section 68 of the Act, therefore, the word "section" has to be interpreted as "sub-section".

ALLOCATION OF MR. B.K. SHRIVASTAVA & MR. V.K. SHRIVASTAVA TO THE STATE OF CHHATTISGARH AND MR. A.K. TIWARI TO THE STATE OF MADHYA PRADESH

32. The learned senior counsel for the petitioner further argued that Mr. A.K. Tiwari was provisionally allocated to the State of Chhattisgarh w.e.f. 1st November, 2000, and only one post of Above Super Time Scale was allotted to the State of Chhattisgarh, therefore, no other person carrying Above Super Time Scale could have been allocated to the State of Chhattisgarh as there was only one post available in the State of Chhattisgarh which was surrendered in favour of Chhattisgarh vide Annexure P-4 and till the final allocation dated 07.12.2001, no other post in the Above Super Time Scale was created by the State of Chhattisgarh. He further submitted that Mr. D.S. Jain was also granted Above Super Time Scale on 10.08.2001 and at the time of final allocation he was also carrying the Above Super Time Scale. Therefore, the allocation of respondents 6 & 7 was not according to the guidelines and posts allocated to the State of Chhattisgarh.

33. On the other hand, learned counsel for the respondents submitted that in the State of Madhya Pradesh as on 31.10.2000, eleven Officers were working in the Above Super Time Scale; six against sanctioned cadre posts in the M.P. Higher Judicial Service and five on deputation basis on ex-cadre posts in the Above Super Time Scale. Therefore, in all eleven Officers were working in the Above Super Time Scale. As per Section 68 of the M.P. Reorganisation Act, 2000, all the officers working in the Above Super Time Scale were to be allotted to successor States.

34. As appears from the additional reply filed on behalf of respondent No.5 i.e. Union of India at page 230 of the paper book when the letter dated 11.09.2001 along with the list showing the posts allocated (Annexure R-5/1) from the Registrar General of M.P. High Court was examined, it was seen that as against total cadre strength of 988, there were 1051 Judicial Officers on roll for final allocation. Therefore, a query was raised by the Central Government to the High Court of M.P. seeking clarification as to why there were excess number of Officers on roll compared to the sanctioned strength; whether the broad principle of allocation decided by the High Court of M.P. & Chhattisgarh; and representations from the Judicial Officers had been considered. A reply was sent by the Registrar General, M.P. High Court that large number of officers on roll are working in other Departments on deputation and hence, the variation in the sanctioned strength and the on-roll strength; and the basis of allocation has been the number of Courts actually functioning in seven Districts forming the State of Chhattisgarh and on the basis of the needs of the newly constituted Chhattisgarh High Court. Further, it was intimated that broadly speaking, the guidelines of the Central Government as received from the State Government have been followed namely, factors like willingness of the Judicial Officers, their home district and factum of husband and wife being in Government service were taken into consideration. The decisions for final allocation have been taken only after consideration of representations from individual Officers.

35. Therefore, learned counsel for the respondents submitted that even though initially at the time of provisional allocation one post was allotted to the State of Chhattisgarh taking into consideration six sanctioned strength, but the actual working strength of the Officers in the Above Super Time Scale was 11. Therefore, at the time of making final allocation, it was decided to allot two Officers to the State of Chhattisgarh, keeping in mind 26.23% ratio of the Officers to be allotted to the State of Chhattisgarh.

36. In the light of the above submissions made by the learned counsel for the respondents, if we look into sub-section (3) of Section 68 of

the M.P. Reorganisation Act, 2000, a plain reading of it makes clear that if a person who was to be finally allotted under the provisions of sub-section (2) to a successor State, if he was not already serving therein was to be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned. Sub-section (3) envisages that even if according to the provisional allocation some Officer was working in one State, he could also be allotted to other State in final list and he was to be made available to the successor State as agreed upon between by the two Governments. Therefore, it was not necessary for the Central Government to finally allocate the persons in the same State in which they were working according to the provisional allocation. In final allocation, the Central Government was entitled to change the successor State of any person from the State in which he was provisionally allotted, of course, based on the guidelines issued by the Central Government. Therefore, the allocation of Mr. A.K. Tiwari back to the State of Madhya Pradesh cannot be said to be in violation of sub-sections (2) or (3) of Section 68 of the M.P. Reorganisation Act, 2000.

37. If we look into sub-clause (5) of Part IV of guidelines dated 21st/22nd December, 2000, it lays down that State service employees retiring within two years from the appointed day should not be covered for final allocation to a successor State other than which they have been serving before the appointed day. Mr. A.K. Tiwari was working before the appointed day in the State of M.P. i.e. before 1st November, 2000 and he was to retire on completion of one year from the appointed day. Therefore, as per this clause, he could not have been allotted to the successor State of Chhattisgarh. Therefore, the Central Government has not committed any illegality in allocating Mr. A.K. Tiwari to the State of M.P. Even otherwise, as mentioned in previous part of this order, Mr. A.K. Tiwari himself on 07.09.2001, gave application to the High Court of M.P. changing his option from Chhattisgarh to M.P. and that was acceded by both the Hon'ble Chief Justices and his name was sent for final allocation in the State of M.P. Therefore, while making the final allocation, the allocation of Mr. A.K. Tiwari to the State of Chhattisgarh could not

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have been considered and rightly that was not considered by the Central Government.

38. Now, coming to the question that only one post of Above Super Time Scale was allotted to the State of Chhattisgarh, then how two Officers carrying the Above Super Time Scale could have been allocated to the State of Chhattisgarh, as mentioned above, one post was allotted to the State of Chhattisgarh taking into consideration the fact of sanctioned strength of six posts in the Above Super Time Scale, whereas, eleven Officers were already working in the State of M.P. in the Above Super Time Scale. Sub-clause (2) of Part-III of the guidelines dated 21st/22nd December, 2000 envisages that a tentative final allocation list of all the employees was to be finalized for either of the successor States. As per sub-clause (1) of Part-IV of the above guidelines, final allocation of employees was to be based on distribution of posts to be finalized by the State Advisory Committee. In the present case, eleven Officers in Above Super Time Scale were working in the State of M.P. that is why it was decided that two Officers of Above Super Time Scale should be sent to the State of Chhattisgarh to maintain 26.23% ratio to be allotted to the State of Chhattisgarh. As mentioned above, as against six sanctioned posts eleven Officers were working because five Officers in the Above Super Time Scale were working on deputation. Therefore, in conformity of the mandate issued by the Central Government through the above guidelines in sub-clause (2) of Part-IV, the final allocation of all employees should be such that it is evenly distributed in respect of age and seniority so as to make composite and balanced cadre in the successor States. This is necessary to ensure that promotional prospects of individuals are neither unduly accelerated nor substantially reduced in the successor States to which they are finally allocated. Apart from that clause (4) of Part-1 of guidelines dated 22.03.2001 (Annexure P-10) lays down that if field posts are more or less than 26.23% ratio in the successor States, in exceptional cases, ex-cadre posts can also be distributed according to the ratio. Sub-clause (19) of the above guidelines further envisages that for allocation, the advice of the two Hon'ble Chief Justices will be taken separately. Therefore, while making the final allocation, the relevant factor before the two

Hon'ble Chief Justices was to distribute the Officers evenly and also to take into consideration that in either of successor States the promotional prospects of individuals are neither unduly accelerated nor substantially reduced to which they are finally allocated. Therefore, out of eleven Officers working in the Above Super Time Scale two Officers were allocated to the State of Chhattisgarh. Moreover, sub-clause (9) of Part-IV of the above guidelines lays down that "notwithstanding the guidelines indicated above, the State Advisory Committee would be at liberty to consider any principle/factor which may become crucial in deciding the allocation of employees to the successor States". The combined reading of sub-clauses (2) & (9) of Part-IV makes it clear that while advising the Central Government, the principles and relevant factor before the Hon'ble two Chief Justices were how to take care of both these clauses in order to make equal distribution of all the eleven Officers of Above Super Time Scale, so that promotional prospects of individuals are neither unduly accelerated nor substantially reduced in the successor States. That is why, in their wisdom, they adopted the above procedure to allot two Officers carrying the Above Super Time Scale to the successor State of Chhattisgarh.

39. Now, coming to the question that as to how two Officers could have been accommodated in the State of Chhattisgarh in the Above Super Time Scale, in the State of M.P. since five Officers were working on deputation out of which one on the post of Principal Law Secretary and one on the post of Registrar General were working and the pay scale admissible to the Officers posted on these posts was the same as those Officers carrying or drawing at the time of their posting on these posts. So is the case of State of Chhattisgarh also. The Registrar General of this High Court could have been posted who was carrying the Above Super Time Scale and that being an ex-cadre post, one Officer of Above Super Time Scale could have been accommodated as Registrar General and another Officer could have been posted in the sanctioned allocated strength of cadre post. Apart from this, as mentioned above, the post of Principal Law Secretary was also available in the State of Chhattisgarh and on that post also an Officer in the Pay Scale of Above Super Time could have been posted. That is how Mr. A.K. Tiwari, who was carrying

the Above Super Pay Scale, was in fact posted in the State of Chhattisgarh as Principal Law Secretary and he was carrying the Above Super Time Scale till his retirement on the post of Principal Law Secretary of the State of Chhattisgarh. Therefore, even if one cadre post was surrendered in favour of the State of Chhattisgarh, two Officers carrying Above Super Time Scale could have been allocated to the State of Chhattisgarh since, these two ex-cadre posts were available for posting of Above Super Time Scale Officer.

40. Now, coming to the question that Mr. D.S. Jain was granted Above Super Time Scale w.e.f. 10.08.2001, if in the final allocation two Officers were to be allocated on 07.12.2001 carrying Above Super Time Scale then respondents 6 & 7 could not have been allocated in the final list to the State of Chhattisgarh, as Mr. D.S. Jain was already working in the Above Super Time Scale in the State of Chhattisgarh, we are of the opinion that grant of Above Super Time Scale to Mr. D.S. Jain was not at all legal for the reasons that on the date of grant of pay scale i.e. 10.08.2001, Mr. A.K. Tiwari was already carrying Above Super Time Scale and Mr. B.K. Shrivastava was already provisionally allocated to the State of Chhattisgarh on 07.06.2001 and two Officers were to be allocated to the State of Chhattisgarh; when there were already two Officers working in the Above Super Time Scale then Mr. D.S. Jain could not have been granted Above Super Time Scale on 10.08.2001. Moreover, clause (c) of Part-5 of the guidelines issued by the Central Government on 13th September, 2000, envisages that "all recruitments against vacancies in the interim i.e. till issue of the final allocation orders may be kept in abeyance. Wherever, panels have been drawn but not published they may be kept in abeyance till reorganisation of States is given effect to". Therefore, in view of this clause also during this interim period i.e. from the appointed day till the final allocation of the employees no vacant posts were to be filled up and those were to be kept in abeyance. Therefore, in view of this provision also Mr. D.S. Jain ought not to have been granted the Above Super Time Scale, till the final allocation as per sub-sections (2) & (3) of Section 68 of the M.P. Reorganisation Act, 2000, which envisages that even the persons who were provisionally allocated to

the successor State can also be changed to other successor State in final allocation.

41. Apart from the above, perusal of the record reveals that the grant of Above Super Time Scale to Mr. D.S. Jain was not justified and correct for the reason that on 10.08.2001, the then Registrar General of the High Court placed a note before the competent authority for grant of Above Super Time Scale to Mr. D.S. Jain. The Registry's proposal seeking approval from the competent authority without getting the same approved by Full Court of Chhattisgarh High Court was not legal. It is true that the name of Mr. D.S. Jain was approved for grant of Above Super Time Scale by the Madhya Pradesh High Court, but after formation of the new High Court in the State of Chhattisgarh when Mr. D.S. Jain was allocated to the State of Chhattisgarh, the Registry ought to have placed his matter before the Full Court of Chhattisgarh High Court for grant of Above Super Time Scale. The resolution of the Full Court of M.P. High Court could not have been made basis for grant of Above Super Time Scale to Mr. D.S. Jain in the newly created High Court of Chhattisgarh.

42. Even otherwise, on 10.08.2001, no third post was available for grant of Above Super Time Scale because, on that date Mr. A.K. Tiwari was already working in the Above Super Time Scale and he was working as Principal Secretary (Law) in the State of Chhattisgarh on ex-cadre post and Mr. B.K. Shrivastava who was already in the Above Super Time Scale was also working in the State of Chhattisgarh. Therefore, against one cadre post Mr. B.K. Shrivastava was already available in the Above Super Time Scale category. When Mr. B.K. Shrivastava was already allocated to the State of Chhattisgarh on 07.06.2001, and he was drawing Above Super Time Scale, therefore on 10.08.2001 there was no reason before the Registry to make a note that, "At present in cadre, no Judicial Officer is getting Above Super Time Scale. One post of Above Super Time (in cadre) is lying vacant. Therefore, Shri D.S. Jain may be considered for the grant of Above Super Time Scale from the date of order." On that day, Mr. B.K. Shrivastava, was drawing Above Super Time Scale even though he was working as

District Judge/O.S.D. (Vigilance) in the High Court of Chhattisgarh. But that post was created by the State Government vide order No.4161/यी021-क/2001/छ.ग. dated 10.08.2001 in the pay scale of Rs.18,000-22,400/- i.e. the Super Time Scale. Therefore, Mr. B.K. Shrivastava's posting on this post was not justified, as this post was not carrying the Above Super Time Pay Scale. Against the Above Super Time Scale cadre post, Mr. B.K. Shrivastava was available. Therefore, the proposal of the Registry for grant of Above Super Time Scale to Mr. D.S. Jain was not justified. The Registry had unnecessarily placed the proposal before the Hon'ble competent authority for grant of Above Super Time Scale to Mr. D.S. Jain without any post available. However, Mr. D.S. Jain has retired and grant of Above Super Time Scale to Mr. D.S. Jain has not been challenged, therefore, we are not giving any direction for withdrawal of that benefit to Mr. D.S. Jain.

43. Now, coming to the question of allocation of respondents 6 & 7, respondent No.6 (Mr. B.K. Shrivastava) initially gave his option for the State of M.P., but later on before expiry of prescribed time for giving change of option, he changed his option for the State of Chhattisgarh. Principles governing the allocation were willingness, home district and factum of husband & wife being in Government service. Mr. B.K. Shrivastava gave his option for the State of Chhattisgarh. Therefore, his final allocation to the Station of Chhattisgarh cannot be said to be in contrary to the guidelines. As far as the case of Mr. V.K. Shrivastava, respondent No.7, is concerned, it is admitted position that he is resident of District: Jagdalpur, State of Chhattisgarh. Even though, he had not given any option, but looking to his residence, Hon'ble the two Chief Justices were within their right to advice the Central Government to allocate Mr. V.K. Shrivastava to the State of Chhattisgarh. Sub-clause (b) of Part-4 of the guidelines dated 13th September, 2000, envisages that it would be open for the Government to post them either provisionally or on final basis in any successor State in administrative interest or in the exigencies of public service. Moreover, on the basis of guidelines issued, no other Officer in the

Above Super Time Scale was available for final allocation to the State of Chhattisgarh.

ABDICATION OF POWERS

44. Learned counsel for the petitioner further submitted that the Central Government abdicated its power vested in it as per Section 68 of the M.P. Reorganisation Act, 2000. The Central Government left it to the decision of the High Court for allocation of the Officers and not applied its mind. Therefore, it cannot be said to be valid exercise of powers by the Central Government. With due regard to the learned counsel for the petitioner, there is no force in this argument also, for the reason that as per the guidelines prepared by the Advisory Committee constituted under Section 71 of the M.P. Reorganisation Act, in its meeting dated 23rd & 24th of February, 2001, vide sub-clause 3.6 of Part-3, the Advisory Committee in its wisdom after taking into consideration the specialty of services of employees of the Legislature and High Court, decided to have the advice of Hon'ble the Speakers of both the Assemblies and Hon'ble the Chief Justices of both the High Courts. Even as per the guidelines issued by the Reorganisation Cell on 22nd March, 2001, vide sub-clause (3) of Part-3 and explanation of sub-clause (2) of parts 3.3 & 3.6, the advice of Hon'ble the Chief Justice was to be sought in the matter of allocation of Judicial Officers to the successor States. Even Hon'ble the Law Minister of Central Government wrote a letter to the Hon'ble Chief Minister of Madhya Pradesh (Annexure R-3-9, page 466 of the paper book) on 04.09.2000 to have the consultation with Hon'ble the Chief Justice of Madhya Pradesh High Court in the matter of allocation of judicial officers. In the light of these guidelines, the advice of Hon'ble the Chief Justices was sought. Hon'ble the two Chief Justices in the meeting held on 08.09.2001 considered the question of allocation of Judicial Officers to successor States and in the light of guidelines issued by the Central Government representations of judicial officers were also considered and accordingly, Minutes were prepared and in those Minutes the two Hon'ble Chief Justices gave their advice for allocation of all the Judicial Officers to the successor States including the allocation of

respondents 6 & 7 in the Above Super Time Scale category of Higher Judicial Scrvicc cadrc. Thc advicc was scnt to thc Ccntral Government and the Central Government considering the advice given by the two Hon'ble Chief Justices issued the final list of allocation dated 07.12.2001.

45. The argument of the learned counsel for the petitioner is without force for the reason that the perusal of the additional reply on behalf of respondent No.5, Union of India, reveals that Mr. R.R. Prasad, Director (SR), Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, Government of India, on receipt of letter dated 11.09.2001 from the Registrar General of M.P. High Court (Annexure R-5/1), made a query to the Registrar General that cadre strength is 988, whereas 1051 Officers are on roll for final allocation, how this discrepancy has crept in. The clarification was given by the High Court of M.P. that as large number of Officers are on deputation that is why more number of Officers are on roll than the actual strength and the representations were also considered by the two Hon'ble Chief Justices while giving the advice for final allocation. It was further clarified that the basis of allocation has been the number of Courts actually functioning in seven Districts forming the State of Chhattisgarh and on the basis of the needs of the newly constituted Chhattisgarh High Court. It is also clarified that the guidelines received from the Central Government have been followed namely, factors like willingness of the Judicial Officers, their home district and factum of husband and wife being in Government service were taken into consideration. Therefore, it is clear from this that while giving the advice, the Hon'ble Chief Justices considered the guidelines issued by the Central Government, ground realities and requirements of the newly created State as also the representations of the Officers and the same was sent to the Central Government for approval. The Central Government after considering and seeking clarification, as mentioned above, from the Registrar General issued the allocation list. Therefore, it is incorrect to say that the decision was taken by the two Hon'ble Chief Justices in respect of final allocation. It cannot be termed as that the final decision of allocation was of Hon'ble the Chief Justices and Central Government has not applied

its mind. It is a different matter that after considering the advice given by the two Hon'ble Chief Justices of the both the High Courts and after seeking clarification from the Registrar General of the M.P. High Court, the Central Government accepted it in to-to. It does not mean that the Central Government has not applied its mind and abdicated its powers.

46. In this connection, as has been held by the Hon'ble Apex Court in the case of **Union of India and another vs. P.K. Roy and others** reported in **AIR 1968 S.C. 850** in para 10, dispelling the argument of Mr. Ashoke Sen that the preparation of the provisional and final gradation lists by the State Government constituted a delegation of powers by the Central Government, the Apex Court said that,

> "there is no substance in this argument. It is not disputed that the provisional and the final gradations lists were prepared by the State Government on the principles laid down by the Central Government itself subject to one change in the matter of determining seniority and the provisional gradation list was sent for approval of the Central Government together with representations made by the officers concerned for being dealt with and decided upon by the Central Government. The principle of the maxim 'delegatus non potest delegare' has therefore no application to the present case. Delegation in its general sense does not imply a parting with statutory powers by the authority which grants the delegation, but points rather to the conferring of an authority to do things which otherwise that administrative authority would have to do for itself. If, however, the administrative authority named in the statue has and retains in its hands general control over the activities of the person to whom it has entrusted in part the exercise of its statutory power and the control exercised by the administrative authority is of a substantial degree, there is in the eye of law no 'delegation' at all. In other words, if a statutory authority empowers a delegate to undertake preparatory work and to take an initial decision in matters entrusted to it but retains in its own hands the power to approve or disapprove the decision after it has been taken, the decision will be held to have been validly made if the degree of control maintained by the authority is close enough for the decision to be regarded as the authority's own."

In the light of the above judgment of the Hon'ble Apex Court, in the present case also, the authority and over all control was with the Central Government and Central Government simply asked the

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advice of both the Hon'ble Chief Justices and to prepare the list of Judicial Officers for allocation to the two successor States based on the guidelines issued by the Central Government. As mentioned in the guidelines and looking to the specialty of the services, the Hon'ble Chief Justices were requested to advice for allocation of Judicial Officers for the successor States and accordingly, the two Hon'ble Chief Justices got prepared the list and the same was sent for approval to the Central Government. Therefore, in view of the above law laid down, this exercise cannot be held to be abdication of powers by the Central Government.

47. In the case of **Union of India vs. G.R. Prabhavalkar and others** reported in **AIR 1973 Supreme Court 2102**, it is held that "the High Court has no power to go into the merits or otherwise of such equation of the posts, more so when action of Central Government was neither mala fide nor influenced by irrelevant and extraneous considerations". We find that nothing has been pointed out which goes to show that the decision of the Central Government is mala fide and arbitrary. There are no allegations in the petition or ground raised in the petition that the impugned allocation is in excess of the powers conferred by the statute or is vitiated by mala fide. Therefore, the allocation made by the Central Government cannot be termed as illegal or arbitrary or contrary to the guidelines and the petitioners have not been able to make out any justifiable ground for quashing the final allocation. Even though, in para 5-13 of the petition, it has been mentioned that order dated 07.06.2001 regarding the provisional allocation of Mr. B.K. Shrivastava appears to have been made due to extraneous consideration because subsequent order passed by respondent No.5 (Union of India) on 16.07.2001 confirming the provisional allocation list of 199 Judicial Officers, did not contain the name of Mr. B.K. Shrivastava. It is true that the name of Mr. B.K. Shrivastava does not find place in the provisional list dated 16.07.2001, but he was provisionally allocated on 07.06.2001 and his name finds place in the final allocation list dated 07.12.2001. Therefore, merely on this ground it cannot be considered that the provisional allocation of Mr. B.K. Shrivastava was made for extraneous considerations. In order to substantiate this fact that the provisional allocation of Mr. B.K. Shrivastava was

made for extraneous considerations, during the course of the argument, learned counsel for the petitioner could not elaborate as to how it can be inferred in the facts and circumstances that the provisional allocation of Mr. B.K. Shrivastava was made for extraneous considerations.

48. The jurisdiction under Article 226 of the Constitution of India is a discretionary jurisdiction. The petitioners, in order to seek relief under this extra-ordinary jurisdiction, are required to prove legal injury and legal right as the same is *sin qua non* for issuance of writ in favour of the petitioner. Admittedly, the petitioners on the appointed day were carrying the Super Time Scale and respondents 6 & 7 were in the Above Super Time Scale. Even in length of service, both these Officers are seniors by three years to the petitioners. As discussed above, one post of Above Super Time Scale was allotted to the State of Chhattisgarh and as five Officers more than the sanctioned strength in the Above Super Time Scale were working in the State of M.P. and in order to accommodate them and to complete the ratio of 26.23%, two Officers were to be allocated to the State of Chhattisgarh, therefore, these two Officers (respondents 6 & 7) were rightly allocated, looking to the posts of Registrar General and Principal Law Secretary in the State of Chhattisgarh. Therefore, in any way, any right of the petitioners on account of allocation of these two Officers has not been infringed and no legal injury has been caused to the petitioners. If we see, the original combined seniority list of the State of M.P. as on 21st September, 2000, respondent No.6 was at serial No.7 and respondent No.7 was at serial No.8, whereas, petitioner Mr. Dilip Raosaheb Deshmukh was at serial No.31 and another petitioner Mr. D.S. Jain was at serial No.12. After allocation, the position of Mr. Dilip Deshmukh reached to serial No.5 and the position of Mr. D.S. Jain reached to serial No.3 in the seniority list. As per sub-clause (4) of Part-3 of the guidelines dated 21st & 22nd December, 2000, final allocation of employees should be such that it is evenly distributed in respect of age and seniority so as to make composite and balance cadre in the successor State. This is necessary to ensure that promotional prospects of individuals are neither unduly accelerated nor substantially reduced in the successor State to

which they are finally allocated. In the light of the above guidelines and above position of the petitioners after final allocation, it is clear that the petitioners have not been, in any way, put to a disadvantageous position or their right has not been infringed or no legal injury has been caused to them. In the service law, every employee has a right of consideration for promotion, but chance of promotion is not conditions of service.

49. In the case of **The State of Mysore and another vs. G.N. Purohit and others** reported in **1967 (1) S.L.R. 753**, the Hon'ble Apex Court held that by changing the system from district-wise to state-wise the respondents have been very hard hit and have become very junior and that has affected their chances of promotion which were protected under the proviso to Section 115 (7) of the States Reorganisation Act, 1956. Dispelling this argument of the petitioner, Hon'ble the Supreme Court held that chances of promotion are not conditions of service. As discussed in earlier part of the order, allocation of respondents 6 & 7 is not contrary to the guidelines and they were already seniors to the petitioners.

50. The learned counsel for the petitioners argued that after preparation of the tentative list for final allocation, the same ought to have been circulated among the Judicial Officers in order to give them an opportunity for making representation against the proposed list and the same was not done in this case. He further argued that even when the petitioners made applications to the Law Secretary of Chhattisgarh and Madhya Pradesh to provide the copies of the list of final allocation sent by the High Courts, even that was denied to the petitioners. Therefore, principle of natural justice has been violated and therefore, allocation of respondents 6 & 7 is bad. It is true that before sending the list to the Central Government for final allocation, tentative list was not circulated among the Judicial Officers to give them opportunity to make any representation, if any, against the list. As per Part-VIII of the guidelines for final allocation issued on 21st/22nd December, 2000, a time schedule was fixed for taking steps to prepare the list for final allocation and as per column 3, the Advisory Committee was required to circulate the tentative list to the successor States for notification to all the

employees regarding their final allocation and to submit their representations, if any, for final allocation. Therefore, no doubt, the petitioners were entitled for circulation of the tentative list to them as per the guidelines. But we have to see as to whether on account of that the rights of the petitioners have been affected. As mentioned above, two Officers in the Above Super Time scale were to be allocated to the State of Chhattisgarh and as per the guidelines, respondents 6 & 7 were the only eligible Officers for allocation to the State of Chhattisgarh. Apart from that the petitioners were in the Super Time Scale, whereas respondents 6 & 7 were in the Above Super Time Scale. Therefore, respondents 6 & 7 were already seniors and they were allocated against the available posts and the petitioners were not entitled for those posts, as they were not drawing the Above Super Time Scale. Therefore, in the circumstances, on account of non-circulation of the list, rights of the petitioners, in any case, are not affected vis-à-vis respondents 6 & 7 and no injury has been caused to them. However, the right of the petitioners was affected to the extent that if the proposed list for final allocation was circulated among the Judicial Officers or on demand by the petitioners if the copy of the proposed list was provided to the petitioners, in that case, the petitioners could have made a representation looking to their seniority and chances of further promotion for allocating them to the State of Madhya Pradesh. The petitioners have been denied this opportunity. Non-circulation of the list to the petitioners and not providing the list on demand made had certainly affected the right of the petitioners to make their representations. If the opportunity is now given to the petitioners to make representations within a period of 15 days that will serve the purpose.

51. Therefore, if the petitioners want to make any representations, they may make representations to the Central Government within a period of 15 days from today and in turn, the Central Government is directed to consider and decide the same within a period of two months from the date of the receipt of the representations and pass appropriate orders in accordance with law.

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52. It is made clear that numbers of authorities were cited by the learned Advocates for the parties, but only those cases are referred, which are relevant and have bearing on this case.

53. Subject to what has been stated above, in the opinion of this Court, there is no infirmity in the order of final allocation and the petitioners have not been able to show that the order of allocation of respondents 6 & 7 to the State of Chhattisgarh is illegal. These petitions (W.P.Nos.1269 of 2001 & 414 of 2002) are accordingly, stand disposed of. However, looking to the facts and circumstances, cost is made easy.

Sd/-
L.C.BHADOO
Judge

4.12.2003

Soma

HIGH COURT OF CHHATTISGARH : BILASPUR
WRIT PETITION No. 414 OF 2002

Dilip Deshmukh

-v-

State of Chhattisgarh and others.

WRIT PETITION No. 1269 OF 2001

D.S. Jain

-V-

Union of India and others

O R D E R

As per Fakhruddin, J.

I have the advantage of reading the order of esteemed learned Brother Hon'ble L.C. Bhadoo, J. and I agree with the conclusions to which he has reached. However, I would like to point out my own reasons in the matter.

2. The petitioner in W.P. No. 414/2002 has challenged the order No. 14-2-2000 S.R.(S) dated 7-6-2001 passed by the respondent No. 5 ordering provisional allocation of respondent No. 6-Shri B.K. Shrivastava, retrospectively from 1-11-2000 to Chhattisgarh under Section 68(1) of the M.P. Reorganisation Act 2000 and further the joining report of respondent No. 6 in the High Court of Chhattisgarh. The petitioner has further challenged the order No. 14/46/2001 S.R.(S) of the respondent No. 5 on 7-12-2001 issuing a list of final allocation of 203 Judicial Officers to the State of Chhattisgarh wherein under the above Super Time Scale Category, the respondents No. 6 and 7 have been shown as allocated finally to the State of Chhattisgarh w.e.f. 1-11-2000.

3. In the writ petition No. W.P. 414/2002 following reliefs are claimed:-

> "(i) This Hon. Court may kindly be pleased to send for the entire record from the possession of the respondents for its kind perusal;
> (ii) This Hon. Court be pleased to quash the impugned order dated 7-6-2001 (annexure P-1) and the final allocation of respondent No. 6 and 7 to the Chhattisgarh vide order dated 7-12-2001 (Annexure P/2) and the joining reports of Shri B.K. Shrivastava dated 29-6-2001 and Shri V.K. Shrivastava date 24-12-2001 as void, illegal, arbitrary and opposed to law.
> (iii) This Hon. Court be pleased to issue a writ of prohibition against the official respondents restraining them from processing the names of respondents No. 6 and 7 for elevation to the High Court of Chhattisgarh.
> (iv) This Hon. Court be pleased to direct the official respondents to restore the position of the petitioner in conformity with the order No. 14/2/2000-SR(s) dated 16-7-2001 (Annexure P/7) allocating 199 judicial officers to the State of Chhattisgarh for all purposes.
> (v) Any other appropriate writ or order or direction which this Hon. Court deems just, may also be passed in the interest of justice;
> (vi) Cost of the petition.

4. The petitioner in W.P. No. 1269/2001 has challenged the order No. 14/02/2000 – SR(s) dated 07-06-2001 passed by the respondent No. 1 ordering provisional posting of respondent No. 6. Shri B.K. Shrivastava in Chhattisgarh retrospectively w.e.f. 1.11.2000 under Section 68 (1) of the M.P. Reorganisation Act 2000 and further joining duty by respondent No. 6 in High Court of Chhattisgarh, Bilaspur. The petitioner has claimed the following reliefs in the petition No. 1269/2001:-

> "a. The impugned order dated 7-6-2001 (Annex. P/1) issued by respondent No. 1 be kindly quashed.
> b. The petitioner prays that he be kindly awarded the above Super Time Scale w.e.f. 1.11.2000 since the date that in cadre post is available, as petitioner has already been approved for award of above Super Time Scale in the full Court meeting of Hon'ble High Court of Madhya Pradesh in their meeting held on 08.07.2000.

c. That, final allocation list dated 7-12-2001 annexure A/X in respect of respondent No. 6 and 7 in above super time scale category be kindly quashed."

5. It is appropriate to refer the averments and grounds raised in the petition and also raised by respondents in their return briefly. However, since main arguments have been advanced in W.P. No. 414/2002, the pleadings and documents referred to in this order are mainly from W.P. No. 414/2002.

6. The petitioner contends that on the basis of options given by the Judicial Officers, a Committee Constituted by the respondent No. 4 recommended provisional allocation of 199 Judicial Officers and a list was issued by the respondent No. 5. It is contended that subsequently the respondent No. 6 opted for State of Chhattisgarh which was forwarded without concurrence of the High Court as required under Article 235 of the Constitution of India. It is submitted that ground urged in ground No. 6.1 is that the the impugned order dated 7-6-2003 (Annexure P-1) issued by the Union of India provisionally allocating Shri B.K. Shrivastava with retrospective effect w.e.f. 1-11-2000 to Chhattisgarh is issued in blatant violation of the mandate of Section 68(1) of the M.P. Reorganization Act, 2000. Submission in ground No. 6.2 is that order the dated 7-12-2001 (Annexure P/2) is vitiated on the ground of having been issued in breach of the mandatory provisions of Section 68(2) of M.P. Reorganization Act, 2000 as the power vested in the Union of India for issuing a final allocation list is to be exercised within one year from the appointed day, i.e. 1-11-2000.

7. The grounds are mentioned in para 6 of the petition. Ground No. 6.3 is that the allocation of respondents No. 6 and 7 is vitiated as maintaining the ratio of 26.23% only one post in the above Super Time Scale was abolished from the erstwhile State of M.P. for being allotted to the successor State of Chhattisgarh, vide notification dated 1-11-200 and no other post in the above Super Time Scale was sanctioned and available for respondents No. 6 and 7 in Chhattisgarh. It is submitted in ground No. 6.4 that the impugned order dated 7-6-2003 (Annexure P-1) provisionally allocating respondent No. 6 to the State of Chhattisgarh is further vitiated for the reasons that the name of respondent No. 6 neither figured in the original provisional allocation list issued on 31-10-2000 nor figured in the subsequent orders dated 29-3-2000 or 16-7-2001 issued by the Union of India by which the provisional allocation list of 31-10-2000 was confirmed.

8. Reply on behalf of State of Chhattisgarh/respondent No. 1 has been filed. It is stated in the reply that in view of the Article 235 of the Constitution of India the allocation of a judicial officer is a subject matter between the High Courts and the State Government has no role to play and in the prsent case the State Government of Chhattisgarh was not consulted before provisional or final allocation of the judicial officers. It is further stated that under the provision of M.P. State Reorganisation Act 2000 it is the Government of India having the final authority to allocate the officers including the judicial officers.

9. The High Court of Chhattisgarh-respondent No. 2 filed its reply. It is submitted in the reply that the reorganisation is an extra ordinary event and

provision/final allocation of the judicial officers has taken place on the decision of Hon'ble High Court of Madhya Pradesh as well as that of Chhattisgarh. It is submitted that the order of final allocation has been issued by the Government of India in view of the decision taken and list finalised by Hon'ble the Chief Justice of High Court of M.P. and Hon'ble the Chief Justice of High Court of Chhattisgarh. The provisional and final allocation of respondents 6 and 7 has been done after considering the representation of various officers including respondent No. 6 and in a joint deliberation of Hon'ble the Chief Justices of two High Courts in their meeting held on 8-9-2001 wherein the entire allocation of the officers was finally settled.

10. Reply of respondent No. 3/State of M.P. has also been filed. It is stated that since the petitioner has not made any representation to the proper authority therefore, the petition is not maintainable. In reply to para 5.16 of the writ petition, it is stated that the limitaion regarding issuance of allocation order under Section 68(1) of M.P. Reorganization Act was relating only to provisional allocation and there is no time limit for issuance of final allotment order under Section 68(1) of M.P.R.A. It is stated hat the chance of promotion is not a condition of service. The petitioner has no locus standi to challenge the allocation of the officers.

11. The High Court of M.P./respondent No. 4 has filed its return. It is submitted that respondent No. 6 and respondent No. 7 were granted the Above Super Time Scale w.e.f. 19-8-1999. It is further submitted that accordingly the respondent no. 6/Shri B.K. Shrivastava was placed at S.

No. 7 while respondent No. 7 Shri V.K. Shrivastava was placed at S. No. 8 in the cadre of Above Super Time Scale. It is also submitted that the petitioner was not granted Above Super Time Scale and he was placed at S. No. 31 in the cadre of District and Sessions Judges. Thus the petitioner was placed much below the respondents No. 6 and 7.

12. It is submitted in paragraph 4 of the return that allocation of more than one Judicial Officer holding Above Super Time Scale has nothing to do with allocation of number of posts in Super Time Scale. There may be more Judicial Officers than the number of posts in Above Super Time Scale/Super Time Scale/Selection Grade, who may be allocated and may be functioning as such in the State of Chhattisgarh. It is stated that since there was several ex-cadre posts such as Registrar General, Registrar (Vigilance), District Advisor to Hon'ble the Governor of the State etc., a Judicial Officer in the grade of Avove Super Time Scale may always be posted on any of these ex-cadre posts.

13. It is submitted that respondent No. 6-Shri B.K. Shrivastava made a representation on 11-1-2001 (Annexure R-2) to the respondent No. 4 i.e. High Court of M.P. for change in State cadre allocation to the State of Chhattisgarh. The representation was forwarded by the respondent High Court of Chhattisgarh to the respondent No. 4 vide memo dated 11-1-2001 (AnnexureR-3). It is submitted that then the respondent High Court of Chhattisgarh informed to the respondent No. 4 that the said High Court gives its consent and expresses no objection if the respondent No. 6 is allocated to the State of Chhattisgarh. The matter was then considered by

the respondent No. 4 and it was resolved that name of the respondent No. 6 be recommended to the State Government for his provisional allocation to the State of Chhattisgarh. It is further submitted that the representations made by other Judicial Officers were forwarded to the State Government for provisional allocation/reallocation to the State of Chhattisgarh/Madhya Pradesh. The Central Government however issued order in respect of Shri B.K. Shrivastava on 7-6-2001.

14. In paragraph 6 of the return, it is submitted that subsequently at the request of the High Court of Chhattisgarh to allocate Shri A.K. Tiwari to the High Court of M.P., the matter was placed before the Administrative Committee No. 1 in its meeting held on 3-9-2001 and it was resolved that Hon'ble the Chief Justice may take appropriate decision in consultation with the Hon'ble Chief Justice of High Court of Chhattisgarh in the matter of final allocation of Shri A.K. Tiwari to the High Court of M.P. as per Annexure R-4/7. Annexure R-4/7 is relevant and quoted below:-

> **"EXTRACT OF THE MINUTES OF THE MEETING OF HON'BLE ADMINISTRATIVE COMMITTEE NO. I HELD ON 3-9-2001.**
>
> **XXX XXX XXX**
>
> ITEM NO. 14: Any other subject with the permission of Hon'ble the Chief Justice
>
> The request of High Court of Chhattisgarh to allocate Shri Ajit Kumar Tiwari to the Madhya Pradesh High Court in the final allocation and in place to allocate some other senior officer to Chhattisgarh State was considered. Resolved that Hon'ble the Chief Justice may take appropriate decision in consultation with Hon'ble the Chief Justice of High Court Chhattisgarh.
>
> Sd/-
>
> (S.L.JAIN)
> REGISTRAR GENERAL
> 3.9.2001"

15. It is submitted that a meeting between the Hon'ble Chief Justice of M.P. and that of Chhattisgarh was held at Jabalpur on 8-9-2001 to consider the matter regarding final allocation/reallocation of Judicial Officers between the two States. It is also submitted that after considering the representations made by the Judicial Officers of the two States allocation to or reallocation from the State of Chhattisgarh, recommendations for final allocation of the Judicial Officers between two States were finalised. Since the respondent No. 7 had not exercised his option and reserved his right to give his option, he was allocated to the State of Chhattisgarh in place of Shri A.K. Tiwari. It is submitted that the home district of Shri V.K. Shrivastava is Jagdalpur which falls within the territorial jurisdiction of Chhattisgarh State. Two separate lists of officers recommended for final allocation to the State as agreed upon between Hon'ble Chief Justice of High Court of M.P. and that of Chhattisgarh along with lists of the posts allocated were sent to the Principal Secretary, Govt. of M.P., Law & Legislative Affairs Department, Bhopal. It is submitted that the Cadre of Super Time Scale and Above Super Time Scale is totally different and the seniority of the Judicial Officers in each cadre is counted from the date the scale is granted.

16. In reply to para 5.12 it is submitted that on the request of the High Court of Chhattisgarh Shri A.K. Tiwari was recommended to be allocated to the State of M.P. and in his place Shri V.K. Shrivastava (respondent No. 7) was recommended to be allocated to the State of Chhattisgarh. In reply to para 5.16, it is stated that the provisions as contained in sub-section (2) of Section 68 of the M.P. Reorganisation Act, 2000 do not put any time

limit on the Central Government for final allocation of the employees. In reply to para 5.20 it is stated that it has been submitted by the petitioner in respect of violation of ratio of 26.23% are totally misconceived. It is submitted that the ratio of 26.23% regarding division of posts between to States is applicable to the officers and employees of the State Government. It is submitted that the respondent No. 4 did not adopt the same. The division of posts in respect of Judicial Officers was done with reference to the number of Courts actually functioning in the seven district of Chhattisgarh State and in addition certain Officers were also allocated to be posted on deputation on ex-cadre posts in view of the need of newly constituted State of Chhattisgarh.

17. In paragraph 12 of the return it is submitted that the petitioner has no locus standii to challenge the final allocation of respondents No. 6 and 7. It is further stated that though a right of promotion is a condition of service, mere chances of promotion are not.

18. Reply has been filed on behalf of Union of India. Reply is quoted below:-

> "It is respectfully submitted that to clarify certain facts the answering respondent beg to submit following Additional reply. That on receipt of the letter dated 11-9-2001, along with the list showing the Posts Allocated (marked and enclosed herewith as (ANNEXURE R-5/1) from the Registrar General of M.P. High Court, forwarding the list of Judicial Officers for final allocation as agreed by the Hon'ble Chief Justice, the details were examined, and it was seen that against a total cadre strength of 988, there were 1051 Judicial Officers on roll for final allocation.

The Central Government had provisionally allocated 200 Judicial Officers as against which 203 names were recommended for final allocation. On a perusal of the list, it was seen that the Hon'ble Chief Justices of the High Courts had agreed to delete 3 names of Judicial Officers who were provisionally allocated and recommended 6 new Officers in lieu, making the list of 203 Judicial Officers for allocation to the State of Chhattisgarh. In response to the list and the details received, a letter was written to the Registrar General of M.P. High Court seeking certain clarifications. The clarifications broadly were in respect of:

a) Excess numbner of officers on roll compared to the sanctioned strength;
b) The broad principle of allocation decided by the Hon'ble High Courts of M.P. and Chhattisgarh; and
c) Whether all representations from Judicial Officers had been considered before recommending the final list.

It is respectfully submitted that the Registrar General, M.P. High Court, in turn has clarified the issues raised by the Central Government. Essentially these clarifications are as under:

a) A large number of officers on roll are working in other Departments on deputation and hence the variation in the sanctioned strength and the on-roll strength.
b) the basis of allocation has been the number of Courts actually functioning in the 7 Districts forming the State of Chhattisgarh and on the basis of the needs of the newly constituted Chhattisgarh High Court. The Registrar General has also clarified that broadly speaking guidelines of the Central Government as received from the State Government have been followed namely factors like willingness of the Judicial Officers, their home district and factum of husband and wife being in Government service were taken into consideration.
c) As regards consideration of representations, the Registrar General has clarified that all decisions for final allocation have been taken only after consideration of

representations from individual Officers and that theses representations have been duly considered in the meeting of Hon'ble Chief Justices of the High Courts of M.P. and that of Chhattisgarh held on 8-9-2001, and after consideration of the representations, the final list has been prepared with the agreement of both the Chief Justice of the Hon'ble High Courts.

A copy of the Chart showing the **Distribution of Posts and Allocation of Judicial Officers** prepared by the DOP&T, based on the list of Judicial Officers and distribution of posts furnished by the Registrar General, M.P. High Court is also marked and enclosed as **ANNEXURE-R-5/2.**

3. It is respectfully submitted that in view of the aforesaid clarifications from the Registrar General of MP High Court, final allocation orders in respect of Judicial Officers working in the successor State of MP and Chhattisgarh were issued.

4. Annexure P/10 referred by the petitioner in Para 6.11 contains detailed procedural guidelines issued by the State Reorganisation Cell, Government of MP, Bhopal pursuant to the Central Government's broad guidelines of 13th September, 2000 and 22nd December,2000, respectively. In Annexsure P/10 at para (19), it has been clearly stated that in respect of distribution of posts in the Legislative Assembly and the Judicial Services, Central Government will take appropriate action in consultation with the Legislative Assembly/Chief Justices of th High Courts.

It is respectfully submitted that in view of the aforesaid the action of the Answering respondent it is just and legal and the petition being devoid of substance and misconceived is liable to be dismissed."

19. Under the reorganisations, powers vest with the Central Government. In the given case, the Central Government has exercised

powers. The petitioner has itself filed document Annexure P-6 dated 29th March 2001 which is reproduced below:-

> "Government of India (Department of Personnel and Training) have had the occation to review the provisional allocation orders issued in respect of Judicial Service Officers and Officers and Staff belonging to the High Court of Madhya Pradesh in terms of the under-mentioned orders:
>
> (a) Order No. 14/2/2000-SR(S) dated 31.10.2000 in respect of annexure pertaining to the Department of Law and Legislative Affairs, Government of Madhya Pradesh.
>
> (b) Order No. 14/2/2000-SR(S) dated 15/18.12.2000 cancelling the provisional allocation orders in respect of Officers/staff belonging to the High Court of Madhya Pradesh to the successor State of Chhattisgarh.
>
> After due examination of all relevant records, it has come to light that at no stage has the Central Government issued provisional allocation orders in respect of Officers and staff belonging to the High Court of Madhya Pradesh and therefore the orders referred at (b) above were not required and are basically infructuous. It is also mentioned that in terms of order dated 15/18/2000, it was specifically mentioned that only provisional allocation orders in respect of Officers and staff of the High Court of madhya Pradesh, to serve in connection with the affairs of Chhattisgarh State were cancelled. The logical conclusion, therefore, follows that the provisional allocation orders in respect of Judicial Officers issued vide orders dated 31.10.2000, referred above, continued to be valid and operational.
>
> In view of the foregoing clarification and also to dispel any misgivings, enclosed please find herewith a copy of the orders of even number dated the 29th March 2001 in Hindi treating the orders of Central Government of even number dated 15/18.12.2000 as infructuous. The list of 199 Judicial Service Officers whose provisional allocation orders was issued vide orders of even number dated 31.10.2000 and which is still operational and valid is sent herewith for ready reference."

20. Annexure P-6 goes to show that the Central Govt. very carefully examined the relevant records, orders in respect of Officers of the Judicial Services. They also examined in respect of officers and staff belonging to the High Court. So far as Judicial Officers are concerned, the list of 199 Judicial Officers whose provisional allocation orders was issued vide orders dated 31.10.2000 were held to be valid. So far as provisional allocation orders in respect of officers and staff of the High Court of Madhya Pradesh

were not approved and it was stated that at no stage, High Court staff was required to be allocated. Therefore, the document Annexure P-6 itself goes to show that the Central Government examined all the relevant records, scrutinised it and dealt with the matter very carefully and wherever it felt that orders are not in accordance with law even by the Hon'ble Chief Justice of High Court, the Central Government did not agree to that. The orders of allocation which according to it were in accordance with law were only held to be valid.

21. In the order my learned Brother has mentioned that Shri A.K. Tiwari could not have been provisionally allocated to the State of Chhattisgarh in view of the policy of the Central Government and as such in the final allocation he has been rightly sent back to the State of M.P. So far as this porposition is concerned, with respect, I do not subscribe to that for the reasons stated hereinafter. The categorical stand of respondent No. 4-High Court of M.P. as reflected in the return of respondent is that the request of High Court of Chhattisgarh to allocate Shri A.K. Tiwari to the Madhya Pradesh High Court in the final allocation and in place to allocate some other senior officer to Chhattisgarh State was considered and it was resolved in the meeting of the Administrative Committee No. 1 of High Court of M.P that Hon'ble the Chief Justice may take appropriate decision in consultation with Hon'ble the Chief Justice of High Court of Chhattisgarh. It is further stated that in the meeting between the Hon'ble Chief Justice of M.P. and that of Chhattisgarh was held on 8-9-2001 to consider the matter regarding final allocation/reallocation of Judicial Officers between the two States. The respondent No. 7 had not given his

option and reserved his right to given option and he was allocated to State of Chhattisgarh in place of Shri A.K.Tiwari. I am unable to subscribe to the observation that Shri A.K. Tiwari's provisional allocation itself was bad. Shri A.K. Tiwari was the only person who had given option in the Above Super Time Scale and the High Court reccommended and Central Government provisionally allocated him. Shri A.K. Tiwari's provisional allocation is not in challenge before us. He is not a party before us and as such I would refrain myself from making any observation with reference to the validity of provisional allocation of Shri A.K. Tiwari as the same is not in dispute.

22. So far as the Above Super Time Scale granted to Shri D.S. Jain is concerned, the matter has been considered in paragraphs 40, 41 and 42 of the order of the learned Brother. I would like to say that Shri D.S.Jain in the petition claimed with effect from 1-11-2000 whereas the High Court of Chahttisgarh has granted the same with effect from 10-8-2001.

23. Stand of the High Court of M.P. is also to the effect that it was for the High Court of Chhattisgarh to consider and grant. The High Court of Chhattisgarh has granted the same. The grant has not been challenged.

24. In this regard the respondent No. 6 has taken his stand in para 6 of the return filed in W.P. No. 1269/2001. Para 6 of the return is quoted below:-

> "That the petitioner is not entitled to any of the reliefs claimed in para 7 of the petition. However, this respondent makes a further submission that the petitioner has not filed this petition with bona fide intentions in as much from the contentions of para 6.13(B) of

the petition., it is clear that this respondent is senior to even Shri A.K. Tiwari and since the latter joined in the Ex-Cadre post of Law Secretary and since on the appointed day i.e. 1-11-2000 this respondent was working as District Judge, Durg on that date, the petitioner is not at all prejudiced or affected by the impugned order and, therefore, he has no grievance to make. It is further submitted that grant of any scale and fixing a date therefor is the exclusive discretion of the Hon'ble High Court and the petitioner has already been granted 'Above Super Time Scale' as mentioned above. The final allocation has also been made and Shri V.K. Shrivastavaq, also junior to this respondent and drawing the 'Above Super Time Scale' has been allocated to the State of Chhattisgarh and posted as District Judge, Raipur. Therefore, in fact as per the contentions of the petition, the 'Above Super Time Scale' granted by the Hon'ble High Court of Chhattisgarh to the petitioner w.e.f. 10-8-2001 deserves to be withdrawn at least from the date Shri V.K. Shrivastava has joined as District Judge, Raipur."

25. In paras 40, 41 and 42 of the order, it has been observed that the grant of Above Super Time Scale to Mr. D.S. Jain was not at all legal and justified. With respect, I do not subscribe to the conclusions reached at by my learned Brother and I am of the opinion that Shri D.S. Jain was the person who was on the substantive post of District Judge, Raipur whereas the A.K. Tiwari and respondent No. 6 Shri B.K. Shrivastava both were on Ex-Cadre. I held that the said benefit doesw not deserve to be withdrawn as the same has rightly been granted. In my opinion there is also nothing wrong in the posting of Shri B.K. Shrivastava as District Judge OSD (Vigilence) as on that day the post was available. Shri B.K. Shrivastava has not raised any grievance on that posting. So far as Full Court is concerned, parties have not challenged the same on that ground and I refrain myself from expresseing any opinion on that as for arriving that, the parties have to be put on notice including the High Court.

26. One aspect deserves to be dealt with which relates to the submission of representation for change of option from State of Madhya Pradesh to

State of Chhattisgarh by respondent No. 6. respondent No. 6 submitted that there was misunderstanding. Learned counsel for the petitioner strcancously argucd that thc rcspondcnt No. 6 submittcd a representation for change of option on 11th January. This he had done while he was still serving as District and Sessions Judge, Durg. He had forwarded a copy of the same to the High Court of Chhattisgarh as well. The then Registrar General forwarded the same intially with the recommendation of Hon'ble the Chief Justice and subsequently wrote that the High Court of Chhattisgarh had no objection. Shri manindra Shrivastava, learned counsel appearing for the High Court of Chhattisgarh submitted that this was not placed before the Full Court. Normally that would have been better had the same been placed before the Full Court of the High Court of Chhattisgarh at that time but since that had not been done the process is not vitiated. The representation was to be considered by the Central Government. The High Court of Chhattisgarh and that of Madhya Pradesh could have given the recommendation for and agaisnt, but the decision was to be taken by the Central Government. The Central Government has taken the decision and has issued the order and the decision was consciously taken and it was within the domain of the Central Government and that having been done, the ultimate decision of the Central Government cannot be set aside on this ground.

27. One aspect deserves to be considered is relief No. 7(iii). So far as the relief No. 7(iii) in W.P. 414/2003 regarding issuance of a writ of prohibition against the official respondents restraining them from processing the names of respondents No. 6 and 7 for elevation to the High

Court of Chhattisgarh is concerned, matter is settled by the decision of the Apex Court in R.K. Mahajan v- Chief Justice of Himachal Pradesh High Court and others (1995(3) SCC 655. Para 4 and 7 of the decision are relevant and quoted below:-

> "4. The appointment to the superior courts is a constitutional process. It cannot be dealt with at the level of inter se seniority even so far as appointment from the judicial service is concerned so long as the senior officer's merit and suitability are taken into account before he is not recommended for elevation.
>
> 7. Generally speaking, no writ would go to constitutional functionaries to form an opinion about the eligibility and suitability of a person for appointment as a Judge of the superior court. Judicial review is, indeed, in a narrow area such as where non-conformity with mandatory constitutional conditions either as to the eligibility or as to procedure are clearly shown to have been violated. Here, the petitioner wants a pre-emptive quia timet action which is not permissible. The prayers in this writ petition are not permissible....."

In view of the law laid down by the Hon'ble Supreme Court in the above case, the relief No. 7(iii) is not permissible and deserves to be rejected. Likewise relief No. 7(iv) of the petition claimed praying to restore the position of the petitioner in conformity with the order No. 12/2/200-SR(s) dated 16-7-2001 allocating 199 judicial officers to the State of Chhattisgarh for all purposees also deserves to be rejected in view of our orders.

28. Before parting, this Court appreciates the very valuable assistance rendered by the Counsel for the parties.

Sd/-
Fakhruddin
Judge

6-12-2003